

DOCUMENT
No. 3452
ADOPTED 11/21/91

SETTLEMENT AGREEMENT

This **SETTLEMENT AGREEMENT** is made on the _____ day of November, 1991 by and among the **CITY OF BOSTON**, the **COMMONWEALTH OF MASSACHUSETTS COMMISSIONER OF REVENUE** (the "Commonwealth"), the **COMMONWEALTH OF MASSACHUSETTS TREASURER** (the "Treasurer"), the **BOSTON REDEVELOPMENT AUTHORITY**, a public body politic and corporate existing under Chapter 121B of the General Laws and acting hereunder pursuant to Chapter 121A, Section 18C of the General Laws (the "BRA"), and **ST. PAUL FEDERAL BANK FOR SAVINGS**, a federal savings bank having its principal office at 6700 West North Avenue, Chicago, Illinois 60635 ("St. Paul").

WHEREAS, the City of Boston and the Commonwealth hold various liens against certain properties located at 148 and 298 Commonwealth Avenue, Boston, Massachusetts and 199 and 238 Marlborough Street, Boston, Massachusetts (the "Properties") and 280 Commonwealth Avenue, Boston, Massachusetts ("280 Commonwealth Avenue"); and

WHEREAS, a subsidiary of St. Paul, on October 19, 1990, successfully bid for the Properties at foreclosure sale, and such purchase subsequently was confirmed by order of the Bankruptcy Court dated December 5, 1990; and

WHEREAS, the City of Boston, the Commonwealth, the BRA and St. Paul desire to resolve the amount to be paid to the City of Boston and the Commonwealth by St. Paul respecting the above-referred to liens;

NOW, THEREFORE, in consideration of the mutual promises herein contained, and for other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the City of Boston, the Commonwealth, the BRA and St. Paul hereby agree as follows:

(1) St. Paul will pay the Commonwealth by certified or cashier's check the amount of seven hundred five thousand dollars (\$705,000.00). The Commonwealth hereby acknowledges that monies paid by St. Paul to the Commonwealth to release any claim against St. Paul and/or the Properties and/or properties at 280 Commonwealth Avenue through the liens identified in Schedule B hereto, are due the City of Boston pursuant to Mass. Gen. Laws Ch. 121A. Therefore, within fifteen (15) business days of the payment by St. Paul, the Commonwealth, through its Treasurer, will distribute said \$705,000 to the City. Further, the Commonwealth agrees that the amount herein stated once paid by St. Paul will release any claim the Commonwealth has against St. Paul and/or the Properties and/or properties at 280 Commonwealth Avenue through the liens identified in Schedule B hereto.

(2) The Commonwealth will prepare, execute and deliver to

St. Paul, simultaneously with the receipt of said payment referred to in paragraph (1), releases with respect to each notice of tax lien with respect to the Properties and properties located at 280 Commonwealth Avenue all as identified in Schedule B hereto. Additionally, simultaneously with the payment by St. Paul referred to in paragraph (1), the City will issue to St. Paul executed "Disclaimer(s) of Tax Title" recordable in form for City of Boston liens with respect to each tax taking of the Properties identified in Schedule A hereto. Prior to execution of this Settlement Agreement, St. Paul will have applied and paid for, but not have received, City of Boston "Certificates of Municipal Liens" ("MLC's"). As a result of application and payment for said MLC's and this Settlement Agreement, simultaneously with the payment by St. Paul referred to in paragraph (1), the City of Boston will issue to St. Paul City of Boston "Certificates of Municipal Liens" indicating that there are no real estate taxes due with respect to the Properties, identified in Schedule A hereto, prior to July 1, 1991. Further, said City of Boston "Certificates of Municipal Liens" will indicate that there are no real estate taxes due with respect to the Properties, identified in Schedule A hereto, from July 1, 1991, to the date of execution of this Settlement Agreement, if the same be true. Effective upon receipt of the payment by St. Paul referred to in paragraph (1), the City of Boston, the Commonwealth and the BRA fully release, remise, acquit and

forever discharge St. Paul and its successors and assigns from and with respect to any and all claims, causes of action, debts, or demands of whatsoever nature, known or unknown, whether in contract or otherwise, at law or in equity, for money owed or recovery of property or other redress which have accrued or may ever accrue, may be now possessed or may or shall be possessed in the future by or on behalf of the City of Boston or the Commonwealth against St. Paul with respect to the Properties and properties located at 280 Commonwealth Avenue with respect to any period prior to July 1, 1991, and arising from or out of the Regulatory Agreement between Back Bay Restorations Company ("BBRC") and the BRA dated March 10, 1986, and the 6A Contract between BBRC and the City of Boston dated March 10, 1986, including but not limited to payments in lieu of real estate taxes, real estate taxes, one-time payments, interest, late fees and penalties from the beginning of the world to June 30, 1991.

(3) The City of Boston will prepare, execute and file within fifteen (15) business days of the payment by St. Paul referred to in paragraph (1), motions to withdraw each Land Court proceeding with respect to the Properties identified in Schedule A hereto, and motions to withdraw any other proceedings initiated with respect to any amounts or any liens referred to in paragraphs (1) and (2) above and against St. Paul and/or the Properties. The Commonwealth will prepare, execute and file within fifteen (15) business days of the payment by St. Paul referred to in paragraph

(1), motions to withdraw any other proceedings initiated with respect to any amounts or any liens referred to in paragraphs (1) and (2) above and against St. Paul and/or the Properties and/or against the properties at 280 Commonwealth Avenue. The City of Boston and the Commonwealth (as the case may be) will provide to St. Paul an attested copy of each motion to withdraw allowed by the appropriate court within a reasonable time of receipt of said allowance. St. Paul assumes responsibility for recording the attested motions and releases the City of Boston or the Commonwealth from the obligation to do the same.

(4) St. Paul's agreement to these terms is based in part upon its understanding that:

(a) the Properties are no longer subject to Mass. Gen. Laws Ch. 121A, and

(b) upon the payment of the amount specified in paragraph (1) above, all obligations of St. Paul and all obligations attaching to the Properties pursuant to the Regulatory Agreement between BBRC and the BRA dated March 10, 1986 and the 6A Contract between BBRC and the City of Boston dated March 10, 1986 will be deemed fully satisfied, and

(c) in consideration of the payment by St. Paul referred to in paragraph (1) above, the City of Boston and the Commonwealth will take all actions necessary to render the Properties free and clear of all liens and encumbrances respecting any amounts or liens referred to in paragraphs (1) and (2) above.

(5) Notices and Communications. Any notice or other communication shall be deemed to have been duly given or made on the earlier of (i) the date of receipt or (ii) the third business day after the same shall have been posted by certified or registered mail, postage prepaid, return receipt requested, addressed to the party to whom such notice or other communication is to be given or made at such party's address set forth below, or at such other address as such party shall designate by written notice to the other party, as follows:

If to the City of Boston:

City of Boston
Office of the Collector-Treasurer
One City Hall Plaza, M-5
Boston, Massachusetts 02201
Attention: Joan M. Schraeder, Esq.

If to the Commonwealth:

Commonwealth of Massachusetts
Department of Revenue
100 Cambridge Street, Room 808
Boston, MA 02204
Attention: Stephen E. Meunier, Esq.

If to the Treasurer:

Commonwealth of Massachusetts
Dept. of the State Treasurer & Receiver General
State House, Room 227
Boston, MA 02133
Attention: Christopher J. Doherty, Esq.

If to the BRA:

Stephen Coyle
Director
Boston Redevelopment Authority
One City Hall Plaza, 9th Floor
Boston, MA 02201

Mailing a copy to:

Robert F. McNeil
Chief General Counsel
Boston Redevelopment Authority
One City Hall Plaza, 9th Floor
Boston, MA 02201

If to St. Paul:

St. Paul Federal Bank for Savings
6700 West North Avenue
Chicago, Illinois 60635
Attention: James O. Bibbs

Mailing a copy to:

Bingham, Dana & Gould
150 Federal Street
Boston, Massachusetts 02110
Attention: John R. Snyder, Esq.

provided, that any notice of change of address, and any notice or communication transmitted other than as specified above shall be effective only upon receipt.

(6) Governing Law. This Settlement Agreement has been negotiated, made and entered into and shall be performed in the Commonwealth of Massachusetts. The validity, enforcement and construction of this Agreement shall be governed by the laws of the Commonwealth of Massachusetts.

(7) Amendments; Successors. This Settlement Agreement may be amended only by an instrument in writing signed by all the parties hereto and shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

(8) Authorization. This Settlement Agreement is executed by Joseph I. Mulligan, Corporation Counsel to the City of Boston, pursuant to City of Boston Ordinance 5-8.1 and by Stephen Coyle, Director of the BRA as authorized by vote of the Authority on November _____, 1991.

IN WITNESS WHEREOF, the parties hereto have executed this Settlement Agreement as an instrument under seal on the date first written above.

CITY OF BOSTON

By: _____
Joseph I Mulligan
Corporation Counsel

COMMONWEALTH OF MASSACHUSETTS
COMMISSIONER OF REVENUE

By: _____
Mitchell Adams
Commissioner of Revenue

BOSTON REDEVELOPMENT AUTHORITY

By: _____
Stephen Coyle
Director

ST. PAUL FEDERAL BANK FOR
SAVINGS

By: _____
Clifford M. Sladnick
Senior Vice President

COMMONWEALTH OF MASSACHUSETTS
TREASURER

By: _____
Joseph D. Malone
Treasurer

SETTLEMENT AGREEMENT
SCHEDULE A

<u>UNIT</u>	<u>CITY OF BOSTON PARCEL #</u>	<u>INSTRUMENT OF TAKING BOOK - PAGE</u>	<u>PETITION TO FORECLOSE BOOK - PAGE</u>	<u>LAND COURT CASE</u>
148 Commonwealth Avenue Unit G1	01345-002	13081-305	15180-026	84507
148 Commonwealth Avenue Unit G2	01345-004	13081-306	15180-027	84508
148 Commonwealth Avenue Unit 101	01345-006	13081-307	15180-028	84509
148 Commonwealth Avenue Unit 102	01345-008	13081-308	15180-007	84488
148 Commonwealth Avenue Unit 201	01345-010	13081-309	15102-144	84321
148 Commonwealth Avenue Unit 301	01345-012	13081-310	15102-145	84322
148 Commonwealth Avenue Unit 401	01345-014	13081-311	15102-146	84323
298 Commonwealth Avenue Unit G1	03073-002	13081-236	15426-009	85257
298 Commonwealth Avenue Unit 101	03073-004	13081-237	15437-158	85312
298 Commonwealth Avenue Unit 102	03073-006	13081-238	15454-149	85336
298 Commonwealth Avenue Unit 201	03073-008	13081-239	15454-150	85337
298 Commonwealth Avenue Unit 202	03073-010	13081-240	15602-172	85645
298 Commonwealth Avenue Unit 301	03073-012	13081-241	15454-152	85339
298 Commonwealth Avenue Unit 302	03073-014	13081-242	15454-151	85338
199 Marlborough Street Unit 101	02658-002	13082-064	15415-196	85173

SETTLEMENT AGREEMENT
SCHEDULE A

<u>UNIT</u>	<u>CITY OF BOSTON PARCEL #</u>	<u>INSTRUMENT OF TAKING BOOK - PAGE</u>	<u>PETITION TO FORECLOSE BOOK - PAGE</u>	<u>LAND COURT CASE</u>
199 Marlborough Street Unit 102	02658-004	13082-065	15415-195	85172
199 Marlborough Street Unit 201	02658-006	13082-066	15415-194	85171
199 Marlborough Street Unit 202	02658-008	13082-067	15386-265	85012
199 Marlborough Street Unit 203	02658-010	13082-068	15415-193	85170
199 Marlborough Street Unit 301	02658-012	13082-069	15415-192	85169
199 Marlborough Street Unit 302	02658-014	13082-070	15402-023	85123
199 Marlborough Street Unit 303	02658-016	13082-071	15402-025	85121
199 Marlborough Street Unit 401	02658-018	13082-072	15402-027	85119
199 Marlborough Street Unit 402	02658-020	13082-073	15402-026	85120
199 Marlborough Street Unit 403	02658-022	13082-074	15402-024	85122
199 Marlborough Street Unit 501	02658-024	13082-075	15425-336	85225
199 Marlborough Street Unit 502	02658-026	13082-076	15425-337	85226
199 Marlborough Street Unit 503	02658-028	13082-077	15437-146	85324
199 Marlborough Street Unit 601	02658-030	13082-078	15602-176	85649
199 Marlborough Street Unit 602	02658-032	13082-079	15437-145	85323

SETTLEMENT AGREEMENT
SCHEDULE A

<u>UNIT</u>	<u>CITY OF BOSTON PARCEL #</u>	<u>INSTRUMENT OF TAKING BOOK - PAGE</u>	<u>PETITION TO FORECLOSE BOOK - PAGE</u>	<u>LAND COURT CASE #</u>
199 Marlborough Street Unit 701	02658-034	13082-080	15437-144	85332
199 Marlborough Street Unit 702	02658-036	13082-081	15437-143	85331
238 Marlborough Street Unit G1	03361-002	13081-294	15426-021	85227
238 Marlborough Street Unit 101	03361-004	13081-295	15426-022	85278
238 Marlborough Street Unit 201	03361-006	13081-296	16294-087	87806
238 Marlborough Street Unit 301	03361-008	13081-297	15426-020	85276
238 Marlborough Street Unit 401	03361-010	13081-298	15642-155	85767
238 Marlborough Street Unit 501	03361-012	13081-299	15437-173	85291

SETTLEMENT AGREEMENT
SCHEDULE B

COMMONWEALTH OF MASSACHUSETTS
NOTICES OF TAX LIENS

<u>TAX PERIOD</u>	<u>LIEN #</u>	<u>BOOK - PAGE</u>
1985 & 1986	55014	14995 - 196
1986	51009	14351 - 198
1987	54362	14867 - 206
1988	60905	15740 - 231
1989	65147	16209 - 054

MEMORANDUM

NOVEMBER 21, 1991

TO: BOSTON REDEVELOPMENT AUTHORITY, and
STEPHEN COYLE, DIRECTOR

FROM: KEVIN MORRISON, DEPUTY GENERAL COUNSEL

SUBJECT: BACK BAY RESTORATIONS CHAPTER 121A PROJECT,
SETTLEMENT AGREEMENT CHAPTER 121A OBLIGATIONS AND
CERTIFICATE OF PROJECT TERMINATION

EXECUTIVE

SUMMARY: Request authorization for the Director to execute on behalf of the Authority: (1) a Settlement Agreement among the Commonwealth of Massachusetts, the City of Boston, the Authority and St. Paul Federal Bank for Savings with regard to the payment of \$705,000 in full settlement of all Chapter 121A payments and obligations and (2) a Certificate of Project Termination and related documents to evidence that the Back Bay Restorations Project is no longer subject to Chapter 121A.

GENERAL BACKGROUND INFORMATION

In 1985, the Authority sued the original owner of this Chapter 121A Project, Back Bay Restorations Company ("BBRC") for illegal condominium conversion. Boston Redevelopment Authority v. Back Bay Restorations Company, et al, Suffolk Land Court Civil Action No. 116134 (the "Condominium Conversion Case"). As part of the restructuring of the project, including refinancing, the Authority received a first mortgage on the project properties to secure an indebtedness of \$500,000. The St. Paul Federal Bank for Savings of Chicago, Illinois (the "St. Paul Bank") held a second mortgage to secure an indebtedness of \$2.2 million. BBRC defaulted on its indebtedness to the St. Paul Bank and the bank initiated foreclosure proceedings. BBRC filed for reorganization under Chapter 11 of the Federal Bankruptcy Code. In re: Bank Bay Restorations Company, Federal Bankruptcy Court for Massachusetts ("Bankruptcy Court"), Case No. 90-11664-HAL/CJK (Chapter 11). Eventually, the Bankruptcy Court allowed St. Paul Bank to foreclose. After the foreclosure became final, the Authority in May, 1991 assigned its first mortgage to the St. Paul Bank. The Chapter 121A designation for the Back Bay Restorations Project terminated as of May 27, 1991. The St. Paul Bank has now reached a settlement with the Commonwealth of Massachusetts and the City of Boston in connection with unpaid excise taxes and payments in-lieu of taxes.

SETTLEMENT AGREEMENT CHAPTER 121A OBLIGATIONS

For the calendar years 1986 through 1990, BBRC, the former owner of the project failed to pay, with a few exceptions, the annual

Urban Redevelopment Excise Tax ("UD Excise Tax") due the Department of Revenue ("DOR"), Commonwealth of Massachusetts (the "State") and the payments due the City of Boston (the "City") under the so-called 6A Contract, dated as of March 10, 1986 (the "6A Payment(s)"). Interest and penalties accrued on the amounts due both the DOR and the City. Further, both a UD Excise Tax payment and a 6A Payment were due on pro-rated basis for the period January 1, through May 27, 1991.

The St. Paul Bank has reached a settlement with both the DOR and the City with regard to the amounts due. A total of \$705,000 will be paid by the bank to DOR. In turn, the State will pay over the \$705,000 to the City within 15 days of receipt.

Although the settlement is primarily with DOR and the City, the Authority has been asked to be a signatory to the proposed Settlement Agreement. Please note the Authority is not being asked to "approve" the settlement. That decision is the responsibility of the DOR and the City. Rather, the Authority will be releasing its contractual right to enforce the payment of UD Excise Taxes and 6A Payments under the terms of the project's Regulatory Agreement, dated as of March 10, 1986 (the "Regulatory Agreement"). In addition, the Authority by signing the Settlement Agreement, will in general be releasing and discharging St. Paul Bank from all monetary or other claims or obligations of any nature that have arisen or may arise under the terms of the Regulatory Agreement. To the best of my knowledge, there is no basis for any other claims or obligations to be enforced against St. Paul Bank.

Enclosed are copies of a transmittal letter from the City's Corporation Counsel, Joseph I. Mulligan, and the proposed Settlement Agreement. It is recommended that the Director be authorized to execute the Settlement Agreement in substantially the form as presented herewith.

CERTIFICATE OF PROJECT TERMINATION

As part of the Order for Judgment issued by the Land Court on December 5, 1985 in connection with the Condominium Conversion Case, the period of the Chapter 121A designation for this project was reduced from 40 to 15 years. Specifically, the designation was to terminate on May 27, 1991. Thereafter, the project properties and the owners thereof would not be subject to the restrictions, benefits and exemptions imposed or conferred by Chapter 121A. Based upon the Land Court's Order for Judgment, the Authority approved the period reduction in the Second Amendment to the Report and Decision that was adopted on December 5, 1985 (the "Second Amendment"). This Second Amendment was approved by the Mayor on December 19, 1985 and filed with the City Clerk on March 10, 1986. The Order for Judgment in the Condominium Conversion Case became final and binding on April 16, 1986.

To confirm that the Back Bay Restorations project terminated on May 27, 1991 and that all of the Chapter 121A duties and

obligations in connection with the project have been satisfied, it is recommended that the Director be authorized to execute in recordable form a Certificate of Project Termination and such other related documents he deems necessary or appropriate. The certificate will be filed with the City Clerk with copies to the City Commissioner of Assessing and Collector-Treasurer, the State DOR and other interested parties.

Appropriate votes follow:

VOTED: That the Director of the Boston Redevelopment Authority (the "Authority") be, and hereby is, authorized to execute a certain Settlement Agreement, in substantially the form as presented at this meeting, among: the Commonwealth of Massachusetts, by and through respectively its Commissioner of Revenue and its Treasurer (the "State"); the City of Boston, acting by through its Corporation Counsel (the "City"); the Authority; and the St. Paul Federal Bank for Savings (the "St. Paul Bank"), in connection with the following: (1) a financial settlement among the State, the City and St. Paul Bank regarding, (a) excise tax payments and related charges due the State under Massachusetts General Laws, Chapter 121A, Section 10 ("Excise Tax Payments") and (b) all payments due the City under that certain "Contract Required by Section 6A of Chapter 121A", dated as of March 10, 1986, between the City and Back Bay Restorations Company ("BBRC") ("6A Payments"); and (2) the release and discharge by the Authority of St. Paul Bank, as the successor in interest to BBRC, from any and all claims or obligations of whatever nature, including but not limited to, the Excise Tax and 6A Payments, which have arisen or may arise under the terms and conditions of that certain "Regulatory Agreement", dated as of March 10, 1986, between BBRC and the Authority, and recorded in the Suffolk Registry of Deeds at Book 12426, Page 005;

AND FURTHER

VOTED: That the Director of the Boston Redevelopment Authority (the "Authority") be, and hereby is, authorized, in connection with a certain project previously approved and developed under Chapter 121A of the Massachusetts General Laws and the Acts of 1960, Chapter 652, both as amended (collectively, "Chapter 121A") and known as the Back Bay Restorations Chapter 121A Project (the "Project"), to execute a Certificate of Project Termination and such other documents or instruments he may deem necessary or appropriate to evidence that the Project designation under Chapter 121A shall terminate as of May 27, 1991 and thereafter the properties which constitute the Project and the owners thereof shall be free from all of the applicable restrictions, benefits and exemptions imposed or conferred by Chapter 121A.



City of Boston
Law Department

Room 615
Boston City Hall
Boston, Massachusetts 02201
617/725-4034
FAX 617/725-3199

Joseph I. Mulligan, Jr.
Corporation Counsel

November 21, 1991

BY HAND

Stephen Coyle, Director
Boston Redevelopment Authority
One City Hall Square
Boston, MA 02201

Re: Back Bay Restoration Company, Settlement
Agreement for Outstanding Chapter 121A Project
Obligation and Certificate of Project Termination

Dear Mr. Coyle: *Steve*

Enclosed is a copy of a proposed Settlement Agreement pertaining to final resolution of all outstanding excise and 6A amounts due the City for the above Chapter 121A Project. For statutory reasons, the Authority must sign the Agreement. As you know, the BRA reached a final settlement with respect to its own interest in this Project in May, 1991. The Project's Chapter 121A status terminated on May 27, 1991.

The enclosed Settlement Agreement finally resolves all Chapter 121A issues connected with the Project. It is critical that the BRA approve the Agreement as soon as possible. I request that you obtain any necessary authorization from the BRA Board in order to execute the Settlement Agreement.

I would be pleased to explain to the Board, either personally or through my assistants, the details of this Agreement which I will execute on behalf of the City in the attached form.

Very truly yours,

Joseph I. Mulligan
Joseph I. Mulligan

Enclosure

cc: K. Simonian, Exec. Dir., BRA
P. McCann, Exec. Asst. to the Dir., BRA

